

Appl. No. 10/757,813
Docket No. 7294C
Amdt. dated March 31, 2008
Reply to Office Action mailed on January 9, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-3, 5-7, 10-11 and 15-17 are pending in the present application. No additional claims fee is believed to be due.

Claims 1 and 10 have been amended. Support for these amendments can be found at least on page 21, lines 18-24; page 26, lines 4-27 of the originally filed specification, as well as Figures 6 and 6A. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

The Rejection under 35 U.S.C. 103(a) over Thompson et al '208, Thompson '135, Sneyd et al, Moore et al, and Lash.

Claims 1-3, 5-7, 10-11, and 15-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al., U.S. Patent No. 5,281,208 (hereinafter "Thompson '208"); and thereby Thompson, U.S. Patent No. 3,929,135 (hereinafter "Thompson '135"); Sneyd et al., European Patent No. 0215417 (hereinafter "Sneyd"); Moore et al., U.S. Patent No. 4,898,642 (hereinafter "Moore"); and Lash et al., U.S. Patent No. 4,935,022 (hereinafter "Lash"). Applicants respectfully traverse this rejection, as the references do not establish a *prima facie* case of obviousness. Specifically, they do not teach or suggest all of Applicants' claim limitations, as required under MPEP 2143.03.

The Office Action states that the claims do not require five distinct layers. The Office Action further states in the Claim Language Interpretation section that the acceptance element does not have to be separate of a separate element from all other elements, e.g. the topsheet. As such, Applicants have amended Claims 1 and 10 to clarify the requisite five layers. Thus, the combination of Thompson '208, Thompson '135, Sneyd, Moore, and Lash, does not teach or suggest a disposable absorbent article comprising a topsheet; a backsheet;

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an absorbent core; an acceptance element; and a fecal storage element, wherein the topsheet, the backsheet, the absorbent core, the acceptance element, and the fecal storage element are all separate elements from each other. Therefore, a *prima facie* case of obviousness has not been established.

Amended Claims 1 and 10 require a disposable absorbent article comprising five layers: a topsheet, a backsheet, an absorbent core, an acceptance element; and a fecal storage element. Thompson '208 does not teach or suggest a disposable absorbent article comprising the five layers claimed in the present invention. Rather, Thompson '208 teaches a structure having a topsheet, a layer or "secondary topsheet" comprising capillary channel fibers, a core, and a backsheet. Thus, Thompson '208 teaches a structure having only four layers. The Office Action states that "Thompson et al teaches a disposable absorbent article for wearing on or about a lower torso of a wearer for receiving bodily exudates which comprises a topsheet, e.g., 9, a backsheet, e.g., 12, joined with the topsheet, an absorbent core, e.g., at least a layer of 11, an acceptance element, e.g. at least a portion of the topsheet, i.e. a "separate" element "joined" with the body surface of the core, ...and a storage element, e.g., 10 or another layer of 11, between the acceptance element and the core and "separate" therefrom." Applicants respectfully disagree with the Office Action's characterization of the layers of the Thompson '208 structure. The Office Action makes assumptions that the layers of Thompson '208 can be divided into sub-layers in order to include all of the layers of the present invention. Applicants contend that Thompson '208 does not teach the five distinct layers claimed in the present invention.

This point is particularly relevant to other assertions made in the Office Action. Specifically, the Office Action states that where general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Applicants contend that general conditions of Claims 1 and 10 of the present invention are not disclosed in the prior art, as the prior art does not teach five distinct layers.

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In addition, amended Claims 1 and 10 require that the fecal storage element be disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element, the acceptance element, and the absorbent core are all separate elements from each other. Thompson '208 does not teach or suggest a fecal storage element as claimed in the present application. The positions stated in the Office Action asserting that it would have been obvious to one of ordinary skill in the art to employ the storage element as claimed in the present invention are again based on the presumption that the general conditions of the claim are disclosed in Thompson '208. As discussed above, Applicants contend that the general conditions of Claims 1 and 10 are not disclosed in Thompson '208.

Further, Thompson '208 is directed to absorbing various body fluids, especially menses. (See Column 1, lines 11-13; Column 13, lines 43-45; Column 31, lines 40-42). Claims 1 and 10 are directed to the storage of fecal matter. Page 27, lines 4-20 of the present specification discuss suitable materials for use as the storage element. In order to store fecal matter, the storage element must have a structure that allows for the absorption and storage of fecal matter. Typically, the amount of fecal matter being stored is larger than the amount of menses during a similar event. Thus, not all fibrous layers have the ability to store fecal matter, as required in Applicants' amended Claims 1 and 10. The capillary fibers taught in Thompson '208 are used to transport menses fluid along the length of the fiber, and would not necessarily absorb and store fecal matter as claimed in the present invention.

In addition, the combination of Thompson '208, Thompson '135, Sneyd, Moore, and Lash do not teach or suggest a disposable absorbent article comprising a topsheet; a backsheet; an absorbent core; an acceptance element; and a fecal storage element, wherein the topsheet, the backsheet, the absorbent core, the acceptance element, and the fecal storage element are all separate elements from each other. Because the suggested combination of references fails to teach or suggest all of the claim elements of amended Claims 1 and 10, Applicants assert that Claims 1 and 10 are nonobvious over the suggested combination of

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references. Additionally, because Claims 2-3 and 5-7 depend from Claim 1, and Claims 11 and 15-17 depend from Claim 10, Applicants assert that they too are nonobvious over the suggested combination of references for at least all of the reasons provided for Claims 1 and 10.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Thompson '208, Thompson '135, Sneyd, Moore, and Lash, do not teach or suggest all of Applicants' claim limitations. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

CONCLUSION

In view of the above, Applicants respectfully submit that each of the issues raised by the Office Action have been addressed. Reconsideration and allowance of the pending claims is respectfully requested.

Respectfully submitted,

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